

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 DERRICK LEWIS,

12 Plaintiff,

13 v.

14 SACRAMENTO COUNTY SCHOOL
15 DIST. et al.,

16 Defendants.

No. 2:20-cv-509-KJM-KJN PS

ORDER GRANTING IFP REQUEST AND
RECOMMENDATION TO DISMISS

(ECF Nos. 1, 2.)

17 Plaintiff, who is proceeding without counsel in this action, has requested leave to proceed
18 in forma pauperis pursuant to 28 U.S.C. § 1915.¹ (ECF No. 2.) Plaintiff's application in support
19 of his request to proceed in forma pauperis makes the showing required by 28 U.S.C. § 1915.
20 Accordingly, the Court GRANTS plaintiff's request to proceed in forma pauperis.

21 The determination that a plaintiff may proceed in forma pauperis does not complete the
22 required inquiry. Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any
23 time if it determines that the allegation of poverty is untrue, or if the action is frivolous or
24 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against
25 an immune defendant.

26 ///

27 _____
28 ¹ This action proceeds before the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C.
§ 636(b)(1).

1 Legal Standard

2 A claim may be dismissed because of the plaintiff's "failure to state a claim upon which
3 relief can be granted." Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) dismissal may be based on the
4 lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable
5 legal theory. Mollett v. Netflix, Inc., 795 F.3d 1062, 1065 (9th Cir. 2015). This includes
6 dismissal for raising legally frivolous claims; i.e. claims that lack an arguable basis either in law
7 or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221,
8 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based
9 on an indisputably meritless legal theory or where the factual contentions are clearly baseless.
10 Neitzke, 490 U.S. at 327.

11 In evaluating whether a pleading states sufficient facts on which to base a claim, all well-
12 pled factual allegations are accepted as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and the
13 complaint must be construed in the light most favorable to the non-moving party, Corrie v.
14 Caterpillar, Inc., 503 F.3d 974, 977 (9th Cir. 2007). The court is not, however, required to accept
15 as true "conclusory [factual] allegations that are contradicted by documents referred to in the
16 complaint," or "legal conclusions merely because they are cast in the form of factual allegations."
17 Paulsen v. CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). Thus, to avoid dismissal for failure to
18 state a claim, a complaint must contain more than "naked assertions," "labels and conclusions," or
19 "a formulaic recitation of the elements of a cause of action." Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555-57 (2007). In other words, "[t]hreadbare recitals of the elements of a cause of
21 action, supported by mere conclusory statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662,
22 678 (2009). Simply, the complaint "must contain sufficient factual matter, accepted as true, to
23 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
24 (citing Twombly, 550 U.S. at 570). Plausibility means pleading "factual content that allows the
25 court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

26 Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & fn. 7
27 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is
28 to tell the plaintiff of deficiencies in the complaint and give the plaintiff an opportunity to cure

1 them—if it appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d
2 1122, 1130-31 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to
3 amend need be given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

4 Analysis

5 Here, the entirety of plaintiff’s claim is contained in a single paragraph, as follows:

6 I have some mobile wireless accounts with Assurance Wireless[,]
7 SafetyNet Wireless[,] and Cloud Mobile (TruConnect), and all of
8 those accounts were being hacked or controlled by a printer and my
9 data, texts, photos, email, were being shared by other customers
10 who had access to my account VCA Mobile Apps, Google Play
store, Google Pay, Eby Apps, and Apple Pay. Kyle Buege had
access to my account and I filed a complaint with the department of
justice and the phone company’s [sic] got audited.

11 (ECF No. 1 at p. 5.) Plaintiff names 25 separate defendants, checks the “federal question”
12 jurisdiction box, claims “fraud, wire transfer, and computer privacy act” violations, and requests
13 795 million dollars in damages. (See Id.)

14 Plaintiff’s complaint, to the extent that it is intelligible, does not remotely allege sufficient
15 facts from which the court can draw a reasonable inference that any defendant violated federal
16 law. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Instead, the
17 complaint consists almost entirely of fanciful and delusional allegations. The few facts alleged
18 are not clearly tied to any legal claims, and plaintiff utterly fails to connect any of the 25
19 defendants—a collection of unrelated individuals, businesses, and government entities—to his
20 allegations. Thus, the complaint lacks the “facial plausibility” of “factual content that allows the
21 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
22 Iqbal, 556 U.S. at 678. For these reasons, it is apparent that amendment would be futile, and so
23 the undersigned recommends that the complaint be dismissed with prejudice.

24 Further, the court notes that plaintiff has a history of filing cases with this court wherein
25 he requests a waiver of the filing fee—triggering the court’s duty to screen under 28 U.S.C.
26 § 1915. A review of these cases demonstrates plaintiff often files suit against numerous
27 defendants (usually in the double-digits), alleges some facet of “identity theft” or “computer
28 fraud” style claims, and requests inordinate amounts of damages (ranging from the hundreds-of-

millions to several billion dollars). These cases have all been dismissed at the screening stage.²

This history of litigiousness not only counsels against providing leave to amend, but indicates that a vexatious-litigant label may need to be applied to plaintiff's filings. Under such an order, plaintiff would be barred from filing, and the court would not consider, any frivolous cases brought by plaintiff. See De Long v. Hennessey, 912 F.2d 1144, 1148 (9th Cir. 1990) ("Flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants."). Given that this is the first time plaintiff has been warned, the court will not take up a vexatious litigant proceeding at this time. However, plaintiff would do well to heed this warning when considering whether to file such fanciful claims with this court in the future.

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis is granted.

IT IS HEREBY RECOMMENDED that:

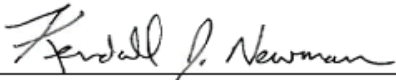
1. The action be DISMISSED WITH PREJUDICE; and
2. The Clerk of Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the court within fourteen (14) days after service of the

² See 2:16-cv-3029 GEB-GGH (dismissing \$15 billion damages complaint against 52 defendants for failure to state a claim, despite leave to amend); 2:16-cv-3049-MCE-EFB (dismissing \$12 billion damages complaint against 48 defendants for failure to state a claim and failure to amend); 2:17-cv-934-TLN-EFB (\$500 million in damages against 17 defendants dismissed for failure to state a claim and failure to amend); 2:17-cv-939-GEB-DB (\$400 million claim against 12 defendants dismissed for failure to state a claim and failure to amend); 2:20-cv-00332 JAM-AC (recommending dismissal of frivolous claim without leave to amend); 2:20-cv-330-KJM-EFB (recommending dismissal of \$5 million identity-theft claims against 7 defendants as "conclusory"); 2:20-cv-346-TLN-EFB (recommending dismissal of \$550 million identity-theft claim for failure to state a claim).

1 objections. The parties are advised that failure to file objections within the specified time may
2 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
3 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

4
5 Dated: March 27, 2020

6 
7 _____
8 KENDALL J. NEWMAN
9 UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
lewi.509